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English - Or. English

27 May 2026

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Information Sharing in Competition Policy – Note by Norway

24 June 2026

This document reproduces a written contribution from Norway submitted for Item 5 of the 149th OECD Competition Committee meeting on 22-24 June 2026.

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JT03587930

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1. Introduction

1. In August 2024, the Norwegian Competition Authority (hereafter the “NCA” or the “authority”) issued a decision to the three largest grocery chains in Norway. In its decision, the NCA concluded that the parties had cooperated from 2011 to 2018 to give mutual access to collect extensive amounts of prices in each other’s grocery stores. The NCA found that the agreement between the parties violated section 10 of the Norwegian Competition Act, as well as article 53 of the EEA Agreement, both of which correspond to TFEU article 101.

2. The decision included cease and desist orders to the three grocery chains, as well as fines totaling around 450 million Euros.¹ All three parties appealed the decision to the Norwegian Competition Appeals Tribunal (the “CAT” or the “tribunal”). The CAT processed the case with an enhanced tribunal of five (rather than three) tribunal members, including three lawyers and two economists. The tribunal’s decision was issued in August 2025, unanimously upholding the NCA’s decision.

3. This contribution briefly describes the case and the conclusions in the decisions from the NCA and the CAT, with emphasis on the economics of the case. The decisions from the NCA and the CAT are both comprehensive, and this contribution is a brief overview of some central issues. The precise wording of the premises and conclusions can be found in the decisions.² All three parties have brought the CAT’s decision before judicial review, and the case is due to be reviewed by the Court of Appeals this fall.

4. This contribution proceeds as follows: A brief overview of the Norwegian grocery market and other relevant factual background is followed by a description of the agreement, as well as brief comments on the legal characterization of that agreement. An account of the analysis of anti-competitive effects is the main part of the contribution. Finally, the conclusions on fines and the orders to terminate the infringement are briefly presented.

2. The Norwegian grocery market

5. The Norwegian grocery market is highly concentrated. Three vertically integrated grocery chains account for about 95 percent of the market in terms of revenue, and their respective market shares have remained relatively stable. The figure below illustrates the market shares of the above-mentioned grocery chains in 2018, the final year of the infringement period in the case at hand.³

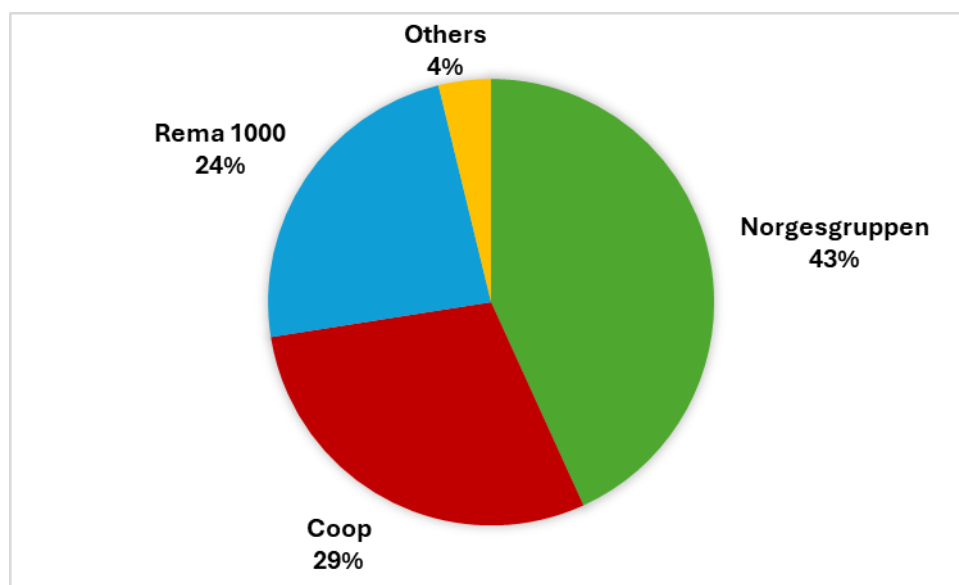
¹ Exchange rate as of early May 2026.

² The full NCA decision (in Norwegian) can be found here: <https://konkurransetilsynet.no/wp-content/uploads/2025/02/V2024-4-Offentlig-versjon-Coop-Norge-SA-Norgesgruppen-ASA-Rema-1000-AS-%E2%80%93-palegg-om-opphor-av-overtredelse.pdf>

The full CAT decision (also in Norwegian) can be found here: https://www.klagenemndssekretariatet.no/wp-content/uploads/2025/03/2025_0504-62-Offentlig-versjon-av-Konkurransklagenemndas-vedtak-V02-2025-1056550_2_1.pdf

³ See, e.g., this [press report](#).

Figure 1. Market Shares in 2018



6. In their decisions, both the NCA and the CAT found that several factors made the Norwegian groceries market vulnerable to restrictions on competition, among them the concentrated nature of the market, along with high barriers to entry. Due in part to these market characteristics, the NCA has long been concerned about price transparency between the grocery chains.

7. In 2007, the NCA looked into market intelligence firm AC Nielsen Norge AS' practice of collecting price data from each of the abovementioned grocery chains, combining and aggregating the information, and distributing it back to the grocery chains in weekly reports. AC Nielsen agreed to discontinue the weekly price reporting to grocery chains Norgesgruppen, Rema, Coop and Ica, after the NCA pointed out that this kind of sharing of price information could harm competition and be illegal.⁴

8. The NCA was concerned that this sharing of prices between grocery chains through AC Nielsen could harm competition in the grocery market, *inter alia* because such sharing made it possible to respond quickly to competitors' price changes. The NCA also stressed that, as this information was not made available to consumers, it would not appear to have positive effects in the form of stimulating the demand side of the market.

9. The NCA did not, however, issue a final decision on the legality of the information exchange. The case was closed after AC Nielsen changed the frequency and granularity of its price reports to the grocery chains, making the reports monthly rather than weekly, aggregating the information, and reducing the number of products covered in the reports.

3. The agreement

10. In 2010, the grocery chains entered into the agreement "Industry Standard for Comparative Advertising", which was intended to provide guidelines for the grocery chains' use of advertising based on price comparisons. The industry standard established that price comparisons should be documented, and it contained a provision stipulating that

⁴ Ica was acquired by Coop in 2015. The NCA approved the merger subject to remedies (divestitures in local markets).

the grocery chains could visit each other's stores to check prices in order to document claims made in comparative price advertising.

11. This 2010 agreement was not covered by the infringement period in the NCA's decision. However, in 2011, the grocery chains agreed that the industry standard's provision on access to each other's stores should be practiced in such a way that enabled the parties to collect large quantities of price information in each other's stores with the use of hand scanners. In the 2011 agreement, access to collect prices was not limited to information needed to document claims made in comparative advertising. The employees that visited competitor stores to check competitor prices, came to be known as "price hunters".

12. In 2012 the grocery chains agreed on a further expansion of price hunters' access to the parties' grocery stores. One of the grocery chains described this 2012 change in access as "in effect" a "full opening".⁵

13. The NCA found that the parties used the agreed upon access frequently and systematically to collect an increasing number of prices in each other's stores. In cases where individual stores prevented competitors' price hunters from scanning prices, the parties referred to the 2012 agreement to secure access. Over time, the parties checked prices at least daily for all products in competitors' stores, and even more frequently for selected products.

4. Effects on competition

14. The NCA found that the parties' realistic courses of action in the absence of the agreement would have provided them with significantly less extensive, less up-to-date, and less frequently updated information on competitors' prices. Without the agreement, the parties would therefore not have had the same continuous overview of competitors' prices and price changes as they did with the agreement. In the absence of the agreement, the market would accordingly have been far less transparent with regard to prices than it was under the agreement.

15. According to the NCA's decision, the agreement led to each party discovering competitors' price changes more often and more quickly than they otherwise could have done. As set out below, the agreement reduced uncertainty between the parties about how competitors would behave, and it weakened the parties' incentives to compete aggressively on price.

16. The NCA noted that all three grocery chains had varieties of price-matching strategies, meaning that when one chain changed a price, competitors typically changed prices in the same direction. The price collection resulting from the agreement therefore meant that when a given chain reduced a price, it could expect competitors to quickly discover and follow its price reduction. When the chain was thus not allowed to be alone with the lower price, because its competitors quickly followed suit, the chain expected to gain fewer new customers by cutting its price, and price cuts did not increase the chances of winning price tests in the media to the same extent. Thus, the agreement weakened the parties' incentives to compete by reducing prices.

17. Each chain could also expect competitors to quickly discover the chain's price increases, and that those competitors would quickly follow suit with their own price increases. When competitors followed a price increase more quickly, there was less risk

⁵ See the CAT's decision p. 45. Our translation.

that the chain that first increased its price would lose customers or lose a price test in the media as a result of the price increase. This strengthened the parties' incentives to increase prices.

18. In addition, the extensive collection of prices meant that each chain quickly learned of competitors' responses to the chain's own price increases. The parties could therefore test price increases in the market and quickly reduce prices again if competitors did not respond by increasing their own prices. In this way, the agreement reduced the parties' uncertainty about competitors' responses, and the risk of losing customers due to price increases was further reduced.

19. Finally, the NCA found that the agreement meant that the parties could more effectively communicate to competitors that they wanted to raise the price level of products, that they were willing to contribute with new price increases, or that they expected competitors to contribute with their own price increases. Such communication through price changes was, among other things, referred to as "signalling" in internal documents, and it reduced competitors' uncertainty about how each party would behave in the market.

20. In this way, the agreement reduced uncertainty between the parties, and it reduced the parties' incentives to compete aggressively. The agreement gave the parties information on each other's market movements, thereby reducing the risk that characterizes well-functioning competition.

21. In its decision, the NCA referred to expert reports written by Professor Joseph Harrington. Professor Harrington detailed the theory of harm, explaining how the information exchange weakened each chain's incentives to reduce prices, while strengthening each chain's incentives to increase prices.

22. The CAT, in its decision, noted that competitors checking each other's prices is neither unusual nor illegal in itself. The CAT emphasized that the case at hand was not, however, about price checking in itself, but about *cooperation* on price checking.

23. It further noted that the parties, through their cooperation, obtained greater certainty regarding each other's price-checking activity and more detailed and more frequent information about each other's prices. The agreement thus made each chain more confident that competitors would discover and respond to its own price changes more quickly, and according to the tribunal:

*"In this way, the agreement weakened competition: Price cuts became less attractive because each chain increasingly expected competitors to react more quickly by cutting their prices. Price increases became more attractive because each chain increasingly expected competitors to follow up more quickly by raising their prices. Taken together, this created pressure toward a higher price level."*⁶

24. The parties argued that the NCAs theory of harm is not founded on established economic theory. The CAT disagreed and concluded that the theory of harm *is* based on economic theory, and that it is grounded on economic principles and results which are, each on their own, well established in economic theory. Furthermore, even though the NCA had not presented a formal mathematical model, it found that the theory of harm rests on fundamental economic mechanisms.

⁶ See the CAT's press release: <https://www.klagenemndssekretariatet.no/konkurranssekklagenemnda/konkurranssekklagenemnda-oppretholder-49-milliarder-i-gebyrer-til-dagligvarekjedene> . Our translation.

25. The parties further argued that the NCA’s theory of harm rests on an assumption of sequential pricing, and that this assumption is not realistic for this market. In the parties’ view, an assumption of simultaneous pricing (Bertrand competition) provides a more accurate description of the market.

26. According to the CAT’s decision, a decisive factor in assessing whether it is reasonable to use simultaneous or sequential pricing as an analytical framework is whether firms in the market obtain information about each other’s prices before setting their own prices. If firms never receive information about each other’s prices, they will set their own prices based on their expectations about rivals’ prices. In such situations, simultaneous pricing may provide an appropriate description. However, in markets where firms collect or receive information about each other’s prices before setting their own prices, sequential (or dynamic) pricing can often provide a more accurate description.

27. The NCA’s decision included extensive reviews of the parties’ seized internal documents and statements in interviews with the NCA, demonstrating how the price hunter information affected internal pricing decisions. The CAT, in its general discussion of this evidence, noted that although *potential* anticompetitive effects are sufficient to satisfy the condition in the TFEU 101(1)-equivalent rules, the theory of harm must also be grounded in the facts in the concrete case, and the potential effects must thus be “*practically operational in the case in question*”. In its specific review of the evidence at hand, the CAT found “*that the overall evidentiary picture in the case leaves no doubt that the theory of harm corresponds to market conditions in the grocery market, both the structure of the market and the appellants’ conduct*” and that “*the theory of harm is both relevant and actually operational in the market*”.⁷

28. Finally, in reviewing the parties’ submissions regarding the counterfactual scenario, the CAT agreed with the NCA that the requirement for a realistic and credible counterfactual scenario does not mean that it must be proven exactly how the parties would have behaved in the absence of the agreement, nor is there any requirement to quantify how much information the parties would have had without the agreement. The tribunal further noted that the infringement concerns not price collection as such, but a *cooperation* on price collection. This cooperation would be absent in the counterfactual situation. The tribunal thus shared the NCA’s conclusion that there was a causal relation between the agreement and the competitive harm.

5. Fines and order to terminate the infringement

29. In its decision, the NCA considered a number of submissions from the parties regarding fines. The submissions included, *inter alia*, that the parties had been open about the agreement, and that the violation was a novel form of violation of the prohibition.

30. The NCA reduced the fines, pursuant to the two-step method, by 90 per cent for all three parties. In doing so, it attached particular weight to considerations of proportionality, the classification of the infringement as an effects-based infringement, and the fact that the NCA had not previously imposed fines in an effects case. The authority considered that, even after a 90 per cent reduction, the resulting fines remain significant and tangible, such that a substantial deterrent effect is achieved, while at the same time ensuring compliance with the principle of proportionality.

⁷ See the CAT’s decision para. 476. Our translations.

31. The Competition Appeals Tribunal upheld the Norwegian Competition Authority's discretionary reduction of the fines by 90 per cent, however it noted that the resulting fines were certainly not too harsh.

32. Finally, the NCA ordered the parties to bring the agreement to an end, insofar as it had not already ceased. The parties were further ordered to refrain from entering into or maintaining any cooperation that may have the same or a similar object or effect. This order was subject to a number of submissions before the CAT, which upheld the order, stating that it "*considers the cease-and-desist order to be proportionate*", and that "*the need to prevent recurrence and circumvention carries significant weight in this case*".⁸

6. Summary

33. Information exchange that restricts competition between competitors is unlawful. The agreement between the parties in the present case has, in practice, involved the sharing of substantial amounts of pricing information among the parties. In the NCA's view, the agreement thus increased price transparency between the grocery chains, without making consumers better informed.

34. During the period in question, price monitoring activities intensified, with the grocery chains eventually being updated on competitors' prices several times a day. As a result of the agreement, each chain expected its competitors to follow price cuts and price increases more rapidly. This made it more attractive for the grocery chains to increase prices, while reducing the incentives to lower prices. The result, in the NCA's view, is reduced competition.

35. The illegal cooperation has weakened competition between the grocery chains over a number of years. The grocery chains' cooperation constitutes a serious infringement, as reflected in the magnitude of the fines.

36. The tribunal, in its decision, concurred with the conclusions on the effects, as well as on the size of the fines.

37. All three parties have brought the CAT's decision before judicial review. The court will review the case in late 2026, with a verdict expected in the first half of 2027.

⁸ See the CAT's decision paragraph 776 (our translation).